IN THE HIGH COURT OF UTTARANCHAL AT NAINTAL

Writ Petition No. 784 (M/S) of 2006

Gurnam Singh,

Son of Late Amar Singh,

Sitting Tenant Harmony Cottage Laxman Puri

Landaur Cantt. Mussoorie ... Petitioner

Versus

1. The Rent Control and Eviction Officer, Dehradun.
2. Chandan Singh Rawat Son of late Shri G.S. Rawat, Resident of I.T. Mo. Landaur Cantt Mussoorie, Dehradun .....Respondents

Counsel for the Petitioner Sri Arvind Vashist

Standing Counsel for the respondent No. 1

Dated 27.6.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 8.6.2006 passed by the Rent Control and Eviction Officer, Mussoorie in case No. 19 of 2000.

Briefly stated, according to the case of the petitioner he is a tenant of premises No. Harmony Cottage Upper Landhor Mussoorie and is residing in the

premise by virtue of the allotment order passed in his favour on 20.2.1985 by the Rent Control and Eviction Officer. A vacancy was declared on 23.11.2000, thereafter a release application was moved by the respondent no.2, and the same was allowed. The petitioner has preferred a revision against the order of vacancy as well as release being rent control revision No. 146 of 2001, and the said revision was dismissed on 6.7.2001. The petitioner preferred a writ petition No. 2408 of 2001, the same was allowed, and the order dated 23.11.2000 was set aside, and the matter was remanded back to the Rent Control and Eviction Officer for deciding afresh on the question of vacancy. After remand of the case the Rent Control and Eviction officer has again declared the vacancy on 8.6.2006. The present writ petition has been filed against the said order.

In Achal Kumar Misra Vs. Rama Shanker Singh and others in Civil Appeal No. 333222 of 1998 decided on April, 11, 2005, it has been held as under :-

13."It is thus clear that an order notifying a vacancy which leads to the final order of allotment can be challenged in a proceeding taken to challenge the final order, as being an order which is a preliminary step in the process of decision making and in passing the final order.

Hence, in a revision against the final order of allotment which is provided for by the Act, the order notifying the vacancy could be challenged. The decision in ***Ganpat Roy'****s case, which has disapproved the ratio of the decision in* ***M/s Tirlok Singh and co.,*** *cannot be understood as lying down that the failure to challenge the order notifying the vacancy then and there, would result in the loss of right to the aggrieved person of challenging the notifying of vacancy itself, in a revision against the final order of allotment'.*

In view of the aforesaid decision, liberty is given to the petitioner to file the revision before the District Judge on reopening of the Civil Court. However, for a period of one month the parties are directed to maintain status-quo. The petitioner shall move a stay application along-with revision and the same shall be disposed on in accordance with law.

Subject to the above, writ petition is disposed of. No order as to costs.

Dated 27.6.2006 **(Rajesh Tandon, J.)**